UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRACTOR COMPANY d/b/a CCS TRUCKING Employer

and 13-RC-022018

TEAMSTERS LOCAL 727, INTERNATIONAL BROTHERHOOD OF TEAMSTERS
Petitioner

and 13-RC-067437

LOCAL 707, TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION Petitioner

DECISION AND DIRECTION

The National Labor Relations Board, by a three-member panel, has considered objections to an election held November 18, 2011, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Consolidated Stipulated Election Agreement. The tally of ballots shows 3 for Petitioner Local 727, 3 for Petitioner Local 707, and 0 against representation, with 6 challenged ballots, a number sufficient to affect the results.

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings and recommendations¹ only to the extent consistent with this Decision and Direction.

The hearing officer recommended overruling the challenges to all of the challenged ballots, and there are no exceptions to these recommendations. The hearing officer further recommended sustaining Petitioner Local 727's objections based on omissions from the *Excelsior* list and setting aside the election because of these objections, without opening and counting the challenged ballots. In the alternative, the hearing officer recommended opening and counting the challenged ballots, and analyzing the *Excelsior* objections in light of the revised tally.

In light of the number of valid but uncounted ballots, we agree with the hearing officer's alternative approach.² Accordingly, we shall remand the case to the Regional Director to open and count the challenged ballots, and thereafter to determine whether further proceedings are warranted in light of the revised tally and the *Excelsior* objections.

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¹ In the absence of exceptions, we adopt pro forma the hearing officer's recommendations to overrule Petitioner Local 727's third and fourth objections. In addition, and as explained below, in the absence of exceptions, we adopt pro forma the hearing officer's recommendations to overrule the challenges to the ballots of Brian Powell, James Livsey Sr., James Livsey Jr., Kyle Harris, Sergio Barajas, and Mike Rizzi.

² Member Hayes does not rely on the hearing officer's finding that the Employer "willfully submitted an inaccurate, misleading or incomplete *Excelsior* list by omitting [Brian] Powell and [Ken] Kendal from said list," and observes that the hearing officer made no finding that the Employer acted in bad faith, but only that it did not substantially comply with the *Excelsior* rule.

Contrary to their colleague, Chairman Pearce and Member Griffin find it unnecessary to address any aspect of the *Excelsior* objections at this time.

DIRECTION

IT IS DIRECTED that the case is remanded to the Regional Director for Region 13, who shall, within 14 days of this Decision, open and count the ballots of Brian Powell, James Livsey Sr., James Livsey Jr., Kyle Harris, Sergio Barajas, and Mike Rizzi, serve on the parties a revised tally of ballots, and thereafter take further appropriate action in light of the revised tally.

Dated, Washington, D.C., August 6, 2012.

Mark Gaston Pearce,	Chairman
Brian E. Hayes,	Member
Richard F. Griffin, Jr.,	Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD